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Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Committee for European Security and Cooperation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

(1 March 1995)

Towards a Europe-linked referendum in former Yugoslavia

1. The Serbs, Croats and Slovenes laid the foundations for modern Yugoslavia by suspending their overlapping territorial claims with the Pact of Corfu of 20 July 1917 which contains some still useful fundamentals:

> "In accordance with the right of self-determination of peoples, no part of this territorial totality may without infringement of justice be detached and incorporated with some other State without the consent of the nation itself.
>
> In the interests of freedom and of the equal rights of all nations, the Adriatic shall be free and open to each and all.
>
> All citizens throughout the territory of the Kingdom shall be equal and enjoy the same rights with regard to the State before the Law."

2. In the Treaty of St.Germain-en-Laye of 10 September 1919, which bears the signatures of the Principal Allied and Associated Powers, i.e. the United States of America, the British Empire, France, Italy and Japan, all inhabitants of the Serb-Croat-Slovene State were given treaty rights with regard to their life, liberty, profession, property and political assembly "without distinction of birth, nationality, language, race or religion". These treaty rights have taken precedence over any national "law, regulation or official action" (art. 1) and - reflecting the above principles of the Corfu Pact - they could not be modified without the assent of the majority of the Council of the League of Nations. Moreover, these so-called minority protection stipulations were declared to "constitute obligations of international concern and shall be placed under the guarantee of the League of Nations" (art. 11).

3. On 12 February 1946, the United Nations General Assembly adopted its resolution 24 (1), providing that

> "The General Assembly will itself examine, or will submit to the appropriate organ of the Untied Nations, any request from the parties that the United Nations should assume the exercise of functions or powers entrusted to the league of Nations by treaties, international conventions, agreements and other instruments having a political character."

4. One or more States Members of the United Nations involved in the 1919 Treaty of St. Germain-en-Laye may thus take the corresponding initiatives, providing notably for the constituent peoples of former Yugoslavia to organize a referendum which may be held before 31 December 1996. In line with the above fundamental agreement of 1917, this could provide for each of them to freely exercise their right to either ratify or reject the dissolution of former Yugoslavia, and also to give each citizen of former Yugoslavia the opportunity to testify to his/her responsibilities as a European citizen.

5. In either case, the peoples and minorities of former Yugoslavia, with their active participation in this referendum, could demonstrate their determination to remain an integral part in particular of the European family of nations and, jointly, to become a full member of the European Union as soon as possible - under either a joint Yugoslavian or Balkan umbrella. They would thus vote neither for nor against, but remain open for an eventual peaceful partial or full reorganization of Yugoslavia within or outside the framework of a Balkan Union, or of another suitable frame for economic, political and cultural cooperation and links. No party should oppose corresponding efforts, and the Principal Allied and Associate Powers should avail their good offices to these effects. In the event, any dispute involving territory might be settled by binding arbitration, with the President of the Swiss Confederation invited to preside over the proceedings. The International Court of Justice could be called upon by any signatory to provide Advisory Opinions on questions of law or fact. Furthermore:

(a) Those peoples and minorities who would have voted to confirm the breakup of former Yugoslavia would be free to organize their institutions within the newly defined - or eventually renegotiated and redefined - internationally recognized borders, and within the constitutional frameworks

they agreed upon, eventually linked to such international minority protection and other guarantees as may be indicated, and with proper direct representation vis-à-vis the guaranteeing powers and international governmental organizations;

(b) Those peoples and minorities who would have rejected the dissolution of former Yugoslavia would be free to create their own independent federal or confederated State, with the name of Yugoslavia, whose international borders, in consultation with the Principal Allied and Associated Powers, should be negotiated and worked out among the involved internationally recognized States;

(c) This referendum should be carried out under the protection of the Principal Allied and Associated Powers with the assistance of the leadership of the Catholic, the Islamic and the Orthodox faiths, and under the supervision of the Council of Europe and the European Union.

6. The free exercise of each people's inalienable right to self-determination should be guaranteed jointly and individually by the Principal Allied and Associated Powers signatories of said 1919 Treaty. Upon signature of this or a similar referendum plan by all parties concerned, and regardless of the outcome of this referendum - i.e., the dissolution and eventual reorganization of former Yugoslavia into the political units which have been, or may yet be recognized by individual States, the European Union and/or the United Nations - the Guarantor Powers should undertake to promptly develop such instruments and negotiate with the States concerned such conditions which would give full, timely and individual meaningful bearing notably to convention rights and to the international minority protection guarantees provided for in said 1919 treaty. To these effects, the European Union and/or the United Nations should dispatch to the areas concerned human rights monitors who should be duly nominated by the beneficiaries of such international guarantees; as such these monitors should be recognized notably in all related forums of the United Nations, the European Union, the Council of Europe and similar organizations.

7. Upon signature of this or a similar plan by all parties concerned, and at least until the referendum would have been carried out, all contested territories in former Yugoslavia should be placed under the effective protection of a suitable international organization or alliance. Corresponding administrative agreements should be worked out forthwith between the latter and the local authorities and peoples. And all military units presently stationed in these contested territories should be placed under an agreed overall command: in cooperation with UNPROFOR, this shall be implemented by the forces in place which are to be directed by correspondingly appointed senior officers and which shall be responsible for disbanding and disarming the militia, de-mining, rebuilding the infrastructure, etc.

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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

Written statement submitted by the International Organization of Indigenous Resource Development, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[2 March 1995]

1. The International Organization for Indigenous Resource Development would like to address certain issues of concern arising from the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-sixth session.

2. The IOIRD is encouraged that a second technical meeting will be held prior to the thirteenth session of the Working Group on Indigenous Populations to consider a final programme of action for the International Decade of the World's Indigenous Peoples. We would of course reiterate our previous interventions that there must be continued full participation of indigenous peoples at all levels of discussions in the United Nations system. IOIRD also supports renewing the appointment of Ms. Rigoberta Menchú Tum as United Nations Goodwill Ambassador.

3. IOIRD would like to thank and commend the Special Rapporteur, Ms. Erica Irene Daes, for her ongoing outstanding contributions, as reflected in part by her preliminary report on the protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/31). We will be commenting further on the draft principles and guidelines. As stated in previous interventions we have presented to this and other forums, we view "free and informed consent" as a very important and fundamental principle in indigenous and non-indigenous relations, especially as reflected in our international treaties. The protection of our heritage must be based on self-determination. Further, our treaties evidence our right to self-determination and reflect also the important spiritual aspects of our agreements and culture.

4. IOIRD must restate its position regarding indigenous peoples' participation at all levels of United Nations discussions of the draft United Nations declaration on the rights of indigenous peoples. It is our view that indigenous peoples are the ones who must live with these laws; consequently, it is very important that we be able to decide on process and content, to determine our own destiny. In support of the call for "a new relationship: partnership in action", we believe and request approval of full and broad-based participation by indigenous peoples, without regard to consultative status, during discussion of the draft declaration in meetings of United Nations bodies, including the Commission itself.

5. We in our July 1994 intervention noted that there are several proposals concerning the kind of permanent forum for indigenous peoples that will be established in the United Nations. There are numerous details requiring clarification and IOIRD wishes to ensure that the best available and most effective forum be established. We argue that the forum must have the authority to sanction, for example, violations of the declaration and other international instruments. Consequently, we restate our view that a seminar or workshop should be convened, with full indigenous participation, to consider the numerous possibilities.

6. On a very recent domestic matter, although it has persisted for years as a failure of the Canadian legal and political systems to administer justice and fairness in the adjudication of an aboriginal, treaty and basic human rights, the Badger case will be argued in the highest court. It is important that we inform the Commission and the United Nations of the loss of confidence of our people in the competence of the laws and politics of Canada to effect meaningful change to the present deplorable third world social and economic conditions that exist in our communities across Canada. In view of this, IOIRD recommends the creation of a truly independent tribunal consisting of representatives from the international community to arbitrate on past, present and future matters affecting our aboriginal, treaty and basic human rights. We rely on the international community for justice and the permanent forum could provide such an opportunity.

7. The study on treaties between States and indigenous peoples of the Special Rapporteur, Mr. Miguel Alfonso Martínez, is extremely important to us as descendants of members signatory to Treaty 6. IOIRD argues for and recommends recognition of Treaty 6 as an international agreement and as a

subject of international law. Such was the spirit and intent when our forefathers performed sacred ceremonies leading up to the agreements to share. This partnership requires a new relationship, one of mutual honour, trust and respect.

8. There are two recent concerns we would urge the Commission to consider for action. First, as indicated in our previous interventions, the domestic situation in Canada regarding Quebec is an ongoing concern. As you know, in an international agreement like Treaty 6, one party (Nation) to the agreement cannot unilaterally alter the relationship or the agreement without the consent of the other. When Treaty 6 was signed with the British Crown and its subsequent transfer of legal obligations to the Crown in the right of Canada, it included Quebec. We view any alteration, unilaterally, to the Federal Crown by the separation of Quebec as a violation of Treaty 6. IOIRD also argues that there are many legal questions that arise upon such an eventuality. The second matter is with respect to the tax exemptions secured as part of treaty negotiations and with respect to tax jurisdiction of First Nations governments. We are requested to notify you, by resolution of the Assembly of First Nations in Canada, of recent violations. By Motion, the Assembly resolved in part:

> "WHEREAS the Government of Canada is seeking to unilaterally impose its own taxation system on First Nations citizens;
>
> WHEREAS this action by Canada represents a major violation of the sovereignty of First Nations, as well as the inherent, aboriginal and treaty rights for which the Crown has sacred and constitutional obligation to protect;
>
> WHEREAS Canada has ignored all attempts by First Nations to engage in dialogue on this issue ... "

9. The recent violations to treaty rights cannot go unregarded. IOIRD maintains that our treaties affirm and evidence our right to self-determination. As such, they are also human rights. In conclusion, we would only remind you of the World Conference on Human Rights in Vienna which considered the denial of the right to self-determination as a violation of human rights (A/CONF.157/23).